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pay weekly to each employé," following which is the provision regarding steam surface railroads above quoted. In *Knoxville Iron Co. v. Harbison*, 183 U. S. 13, 22 Sup. Ct. 1, 43 L. Ed. 55, the Supreme Court upheld a Tennessee statute requiring the redemption of store orders issued in payment of wages in lawful money at their face value as being within the police power. What the conclusion of the court in the principal case would have been had the question of the constitutionality of the statute been raised by a corporation not engaged in a business of a public nature may perhaps be not entirely certain. It should be noted also that the court did not pass upon the constitutionality of the statute as applied to employers other than railroad corporations.

R. W. A.

PRIORITY IN BANKRUPTCY BETWEEN WAGE CLAIMS AND VALID LIENS.—Considerable difficulty has arisen in the Federal courts over the question of the right of valid lien-holders to have their secured claims discharged out of the funds in the hands of the trustee in bankruptcy, in preference to wage claimants. This difficulty has grown up through the application of § 67 d of the Bankruptcy Act of 1898, with reference to § 64 b of the same act. Section 67 subdivision d, of this Act provides that valid liens, to the extent of the present consideration given for them, are not to be affected by the Act. Section 64 subdivision b provides the order of payment for debts which have priority, fourth in this order, according to clause 4 of subdivision b, are wages of workmen, clerks, etc., earned within three months preceding the date of the bankruptcy proceedings, not exceeding three hundred dollars to each claimant. Fifth in this order are debts owing to any person who by the laws of the States or the United States is entitled to priority.

The above question arose in the recent case of *In re Yoke Vitrified Brick Co.* (1910), — D. C. D., Kan., 3rd D. —, 180 Fed. 235. In this case, at the time the company was adjudicated a bankrupt there were a number of valid mortgage liens on the company's funds that had come into the hands of the trustee in bankruptcy. Certain assignees of wage claims against the bankrupt's estate, which conformed to the requirements of § 64 b (4) of the Bankruptcy Act, petitioned the referee to allow these claims priority over the claims of the lien-holders, upon the ground that a statute in the state where the bankrupt company was located, provided for such a preference. The order of the referee denying the claim of the petitioners being brought to the District Court for review, it was held that the wage claims were not entitled to priority over the fixed liens. The court in reaching this conclusion, reasoned that such liens come within § 67 d of the Bankruptcy Act, and as such liens are not to be in any way affected by the act, neither their validity nor priority can be affected thereby. And further, that as state statutes are only given effect by § 64 b, cl. 5, the operation of that clause must be so circumscribed as not to affect the rights of lien-holders under § 67 d.

If valid liens are entitled to be discharged out of the bankrupt's estate in preference to wage claims, or other priorities under § 64 b, it must be by virtue of some provision of the Bankruptcy Act creating such a preference directly, or by recognizing a state law which determines the priority of cer-

tain claims. *In re West Side Paper Co.*, 159 Fed. 241. This proposition seems to be fairly well conceded; however the cases upon the point divide as to just what section of the statute creates this preference in the case of valid liens. One line of authorities holds that such a preference must be exclusively determined by § 64 b, the word "debts" there employed, including secured as well as unsecured debts. The other line of cases holds that § 67 d, in providing that valid liens shall not be affected by the act, should be interpreted to mean that the right such liens have to priority shall not be interfered with by any provision of the Bankruptcy Act, and that § 64 b applies only to unsecured debts.

Whether in providing for "debts" which are to have priority in § 64 b, Congress intended to include debts secured by valid liens, or merely to apply that term to those which were without other security, is not entirely clear from the cases decided by the bankruptcy courts upon the subject. There are however a fairly large number of cases which recognize valid liens as being entitled to priority by virtue of § 64 b, cl. 5. *In re Kerby-Denis Co.*, 94 Fed. 818, 2 Am. B. R. 218; *In re Falls Shirt Mfg. Co.*, 98 Fed. 592, 3 Am. B. R. 437; *In re Laird*, 109 Fed. 555; *In re Bennet*, 153 Fed. 675, 18 Am. B. R. 320; but see contra, *Matter of Meis* (Ref. Ky.), 18 Am. B. R. 104; *In re Cramond*, 145 Fed. 966; COLLIER, BANKRUPTCY, Ed. 7, p. 727. If we can follow that line of decisions which include liens under § 64 b, then the rank of their priority would seem to be governed by the provisions of that section. According to the cases above cited they come under clause 5 of § 64 b. Following such a view, there would seem to be no doubt that wage claims, conforming to the requirements of § 64 b, cl. 4, are entitled to priority over valid liens.

But before it could be determined that such a conclusion would be in conflict with the holding of, *In re Yoke Vitrified Brick Co.*, supra, it must be conceded, that the term "lien," when we speak of § 64 b as referring to debts secured by liens, applies to contractual, as well as to statutory liens. But upon this point likewise, there is some division of opinion. The majority of the cases above cited, are cases in which the liens involved were statutory, so that they cannot well be used as authority for questions involving only contractual liens, as in the principal case, unless it is determined that § 67 d was intended to apply to all valid liens, both statutory and contractual. The words used in that section are, "liens given or accepted in good faith." Such would perhaps exclude liens which fasten by operation of statute, and thus is the holding in some cases. See, *In re Consumer's Coffee Co.*, 151 Fed. 933. Other cases, however, hold that § 67 d is intended to cover all liens not in fraud of the Bankruptcy Act. *In re Kerby-Denis Co.* 95 Fed. 116, 2 Am. B. R. 402. If we should conclude then, that § 67 d applies to all liens, statutory as well as contractual, and that § 64 b, cl. 5, applies also to either statutory liens or liens generally, we would under the construction placed by the court in the principal case upon § 67 d, making it a rule of priority, have two different rules as to priority in case of liens. But under the principle of statutory construction, that in relation to the same subject, in the same statute, particular terms will govern general language, the

priority, by virtue of the above construction, of § 67 d, would apparently have to give place to the priority provided in § 64 b.

Coming to the second view expressed above, upon the question, as to what section of the Bankruptcy Act provides for the priority of liens, viz., that valid liens are given priority to wages by virtue of § 67 d, we encounter some uncertainty as to what Congress intended by the use of the expression, "liens given or accepted in good faith * * * shall not be affected by this Act." In the principal case, as in those which arrive at the same conclusion, the construction sought to be placed upon the term "affected" is, that the priority of such liens shall not be made secondary to any other priority prescribed by the Bankruptcy Act. To hold that the priority of a valid lien cannot be affected in any manner by the Bankruptcy Act must necessarily lead us to conclude that such liens must be given preference to taxes, as provided in § 64 a, or the costs of preserving the estate, under § 64b. Apparently recognizing the error of such a conclusion, the courts seek to avert it by excepting from the operation of the premises, any claims that are inherent in the general principles of equity or the law, as *e. g.* the duty of property to contribute its just proportion of the expense of the government or, its pro rata share of the expenses incurred in the preservation of the estate. Yet the result of such an exception would be, clearly, to place the claim of a lien-holder somewhere between clauses 3, and 4, in the order of priority prescribed in § 64 b, a result which it appears Congress intended to avoid by the enumeration of the order of priority. If equitable rights are to be recognized as entitling a claim to priority, may not then a claim for wages be recognized on equitable grounds, as prior to a valid lien? See, *In re Erie Lumber Co.*, 150 Fed. 823.

It is evident, that in regard to § 67 d, and § 64 b of this Act, both should be read in connection with each other, and be construed to harmonize as much as possible. Such a construction was given in, *In re Consumer's Coffee Co.*, *supra*. It was there held that § 67 d equitably preserves the lien while § 64 b determines the order of its payment.

J. C. M.